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No. 99-537

# In the Supreme Court of the United States

DONALD R. HILL, et al.,
*Petitioners,*

*v.*

MACARTHUR RUMBLES,
*Respondent.*

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

## BRIEF OF 36 STATES AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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## QUESTION PRESENTED

Are prisoners required by 42 U.S.C. 1997e(a), as amended by the Prison Litigation Reform Act, to exhaust administrative remedies before filing suit for damages?

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## STATEMENT OF *AMICI* INTEREST

California's petition addresses the continuing viability of one of the States' most important tools for managing their prisons and jails—inmate grievance systems and similar dispute resolution programs. The decision below diminishes the effectiveness of those systems by allowing prisoners to literally make a "federal case" out of every routine dispute with correctional officials, and in the process, deprives the States of the opportunity to resolve inmates' concerns internally—before litigation.

Internal dispute resolution systems serve a vital function in the States' management of their growing prison and jail populations, for those systems provide an inexpensive and effective way for dissatisfied prisoners to point out internal practices that may need improvement. And "[f]or the prison administrator[,] this involves *using* the system beyond its day-to-day effects: periodically reviewing the grievances to identify patterns, to anticipate problems, and to formulate policies and procedures that respond to them." S. Brakel, Administrative Justice In The Penitentiary: A Report on Inmate Grievance Procedures, 1982 Am. Bar Founda. Res. J. 111, 129 (1982) (emphasis in original). Indeed, that vital impetus for self-correction was a primary reason that administrators initially implemented grievance systems. V. McArthur, *Inmate Grievance Mechanisms: A Survey of 209 American Prisons*, 38 Federal Probation 41, 44 (Dec. 1974).

And by encouraging internal self-improvement, those systems resolve a significant number of disputes that would otherwise end up in court. Grievance systems are quite effective in that regard, with empirical studies indicating that a substantial number of inmate complaints lead to

modifications of official policy. *Managers Need Comprehensive Systems for Assessing Effectiveness and Operation of Inmate Grievance Mechanisms*, (General Accounting Office, Oct. 17, 1977) 2-3. Those grievance-prompted changes in turn avert many lawsuits that would otherwise "require defendants and other staff members to put in long hours conferring with counsel, answering interrogatories, giving depositions, preparing for trial, 'managing' the press and testifying at trial. Many non-frivolous suits concern small monetary sums, and the time devoted to them by administrators is disproportionate to the amounts involved." G. Cole, R. Hanson, and J. Gilbert, *Alternative Dispute-Resolution Mechanisms for Prisoner Grievances: A Reference Manual for Averting Litigation*, (National Institute of Corrections, U. S. Dept. of Justice 1984) 5-6.

Moreover, the grievance systems cost much less than litigation. Although it costs States an average of between $1,200 and $1,500 to litigate a prisoner's grievance, resolving the same grievance through administrative proceedings costs an average of $166. G. Cole, and J. Gilbert, *Alternate Dispute Resolution Mechanisms for Prisoner Grievances*, 9 Just. Sys. J. 306, 308 n.1, 315 (1984).

Congress understood that when, in 1996, it passed the Prison Litigation Reform Act ("PLRA"), modifying 42 U.S.C. 1997e(a) to mandate exhaustion of administrative remedies before a prisoner sues. The decision below ignores the statute's intent, reimposing the high operational costs that the PLRA was designed to limit. That decision is wrong, and left undisturbed, it and others like it will not only frustrate Congress's efforts to limit inmate suits, but will also exact a costly toll of both time and money from States, which will be forced once more to battle in federal court about issues that

often can be resolved much more efficiently through grievance programs. The States have a vital interest in seeing that the congressional intent embodied in the PLRA is carried out by the courts, and therefore urge the Court to review the judgment below.

## REASONS FOR GRANTING THE WRIT

Three compelling reasons point to the need for review of the judgment below: (1) its impact on the day-to-day operation of prisons and jails is so significant; (2) conflicting lower-court decisions on the question presented have created great uncertainty for both State officials and the prisoners they oversee; and (3) the Ninth Circuit erred.

### I. The Question Presented Is Critically Important to The Nation's 4,372 Prisons and Jails.

The problems facing our prisons and jails "are complex and intractable . . . requir[ing] expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of" corrections professionals. *Procunier v. Martinez*, 416 U.S. 396, 405 (1974). The decision below, and others like it in jurisdictions containing some of the nation's largest prisons and jails, greatly complicates that task.

State and local governments now operate at least 4,372 prisons and jails. Criminal Justice Institute, Inc., *The Corrections Yearbook—1998*, 67 (1999); K. Maguire & A. Pastore, *Sourcebook of Criminal Justice Statistics 1996*. Because inmate grievance systems provide valuable operational data and resolve significant numbers of disputes, all but two States have established some type of inmate grievance system. Broad coverage has long been a key

design principle for such systems, for as a General Accounting Office study recognized more than two decades ago, a grievance system, to be successful, "must be applicable to as broad a range of issues as possible." *Grievance Mechanisms in State Correctional Institutions and Large City Jails* (General Accounting Office, June 17, 1977) at 2.

The decision below produces exactly the opposite result. It holds that prisoners may ignore administrative remedies whenever they seek damages that are not available through grievance systems. That reading of § 1997e(a) creates an exception that effectively abrogates the statute's general rule, because almost all prisoners seek damages, and no State except Louisiana has a grievance system that authorizes damages for anything other than the loss of personal property. Similar precedents control in the Fifth and Tenth Circuits, which together with the Ninth Circuit, contain the largest prison and jail systems in the country. *See Garrett v. Hawk*, 127 F.3d 1263 (10th Cir. 1997); *Whitley v. Hunt*, 158 F.3d 882 (5th Cir. 1998); *The Corrections Yearbook—1998*, 2, 210. If those precedents stand, they will undermine the utility of administrative dispute resolution systems where they are needed most.

And the decision below will surely have palpable effects inside prison walls:

> *[If] a prisoner may circumvent state agencies by bringing a section 1983 action, corrections personnel may not become aware of, and hence may not be able to rectify, administrative deficiencies* until federal litigation is commenced. . . . Rather than have state policymakers determine the

> appropriate reform, the federal judiciary interposes its own judgment.
>
> * * *
>
> *Although this might benefit the individual prisoner bringing the action, problems affecting the entire prison population may remain unresolved.*

S. Russo, *State Prisoners and the Exhaustion of Administrative Remedies: Section 1983 Jurisdiction and the Availability of Adequate State Remedies*, 7 Seton Hall L. Rev. 366, 392 and n.148 (1976) (emphasis added). The PLRA sought to eliminate that problem, but the trend toward the pre-PLRA approach, exemplified by the decision below, could not have come at a worse time, for the States' prison systems are facing ever-more-challenging burdens as their populations continue to grow.

Qualitatively, corrections staff are facing significant new challenges in housing mentally ill prisoners, prompting unprecedented, and still evolving, changes to operating procedures. H. Steadman & B. Veysey, *Providing Services for Jail Inmates with Mental Disorders* (National Institute of Justice, U. S. Dept. of Justice 1997); P. Rubin & S. McCampbell, *The Americans With Disabilities Act and Criminal Justice: Mental Disabilities and Corrections* (National Institute of Justice, U. S. Dept. of Justice 1995); F. Cohen, *Disciplinary Proceedings and Mental Illness*, 4(4) Corrections Managers' Report 3 (American Correctional Association 1998). At the same time, the prison population now includes more elderly inmates and more young offenders, and both groups need special accommodations. S. Sampson, *Project for Older Prisoners*, 1(2) Corrections Managers' Report 11 (1995); E. Loughran, *Statistics*,

*Predictions and Reality: How Do We Make Sense of Changing Juvenile Crime?* 1(1) Corrections Management Quarterly 67, 70-71 (1997). Last, but by no means least, there has been a "massive expansion of the female inmate population," raising such unique challenges as pregnancy and child care issues, the difficulties inherent in cross-gender supervision, and the need for a distinct custodial atmosphere. M. Fleisher, R. Rison & D. Helman, *Female Inmates: A Growing Constituency in the Federal Bureau of Prisons*, 1(4) Corrections Management Quarterly 28, 29 (1997); M. Morash, T. Bynum & B. Koons, *Women Offenders: Programming Needs and Promising Approaches*, (National Institute of Justice, U. S. Dept. of Justice 1998); C. Stewart, *Management Response to Sexual Misconduct Between Staff and Inmates*, 2(2) Corrections Management Quarterly 81 (1998).

Those qualitative challenges are complicated by significant quantitative changes as well. The nation's prison population increases by more than 1,150 inmates each week, and has grown by 58 percent in this decade. A. Beck & C. Mumola, *Prisoners in 1998* (Bureau of Justice Statistics, U. S. Dept. of Justice 1999) at 1. To cope with the increasing number and changing nature of inmates, correctional agencies have hired large numbers of new employees who must be integrated into their constantly changing operational systems. *The Corrections Yearbook—1998*, 142 (51,841 new hires in 1997).

The combined effect of those changes has been to put new stresses on correctional systems. The States must cope with novel challenges affecting unprecedented numbers of prisoners, and must do so with growing numbers of new staff. Although they conscientiously try to, and usually succeed in, meeting those challenges, shortfalls are inevitable. Grievance systems provide invaluable data about

the nature and potential solutions for the resulting problems. The decision below and the trend it typifies deprive officials of that data. That may benefit individual plaintiffs, but in the end, it hurts far more prisoners.

Further, the approach adopted below increases the burden of litigation. Many matters that would otherwise be resolved internally will go directly to the federal courts. Federalizing those usually trivial disputes requires the diversion of scarce State resources because "during the course of litigation, administrators and other corrections personnel may be called as witnesses or be named as parties to the proceedings. As a consequence, these individuals are diverted from their managerial and supervisory functions. The result is a less efficient institutional operation." S. Russo, *supra*, at 393. *See also* G. Cole, R. Hanson & J. Gilbert, *supra* at 5-6 (emphasis added). Although the number of prisoner suits has declined since the passage of the PLRA, their burden is still substantial and is likely to increase if the gatekeeping function of § 1997e(a) can be sidestepped with a simple demand for damages. L. Meachum, *Judicial Business of the United States Courts: 1988 Report of the Director* (Administrative Office of the United States Courts 1999) 146 (noting that 26,462 prisoner civil rights and prison condition suits were filed in 1998).

In sum, the Ninth Circuit's decision and similar decisions elsewhere will make it harder for corrections officials to deal with day-to-day operational problems. Instead, resolution of those problems will become the business of the federal courts, which "are not equipped by experience or otherwise to 'second guess' the decisions of . . . [prison and jail] administrators." *Jones v. North Carolina Prisoners' Labor Union*, 433 U.S. 133, 137 (1977) (Burger, C. J., concurring). That hardly "reflects the . . . healthy sense of realism" that recognizes "that needed

reforms in the area of prison administration must come, not from the federal courts, but from those with the most expertise in this field—prison administrators themselves." *Id.* Indeed, it flies in the face of this Court's clear direction that "prison administrators . . . and not the courts, are to make the difficult judgments concerning institutional operations." *Turner v. Safley*, 482 U.S. 78, 89 (1987). That far-reaching impact on State and local prison officials, together with the like effect on the courts themselves, shows why this case merits review, even apart from the clear circuit split on the question.

## II. Prison Administrators Need Clear Guidance on This Recurring Issue.

The circuit split that California's petition describes is real, and has grown since the petition was filed. *See Wyatt v. Leonard*, _____ F.3d _____ (6th Cir. 1999) (holding that "prisoners must exhaust the prison's grievance procedures before filing suit in federal court even though the damages remedy sought is not an available remedy in the administrative process"). That widening split of authority has created great uncertainty for the nation's prison administrators, as the Second Circuit recently noted: "[t]he law concerning the PLRA's exhaustion requirement is in great flux. Several circuits, as well as district courts in this circuit, are split on . . . whether the administrative exhaustion requirement is inapplicable where the relief requested—i.e., strictly monetary damages—is not 'available' through the administrative process." *Liner v. Goord*, _____ F.3d _____ (2nd Cir. 1999). Frustratingly enough, that split has itself inhibited other courts' resolution of the issue, as evidenced by the fact that the Second Circuit's *Liner* decision cited the split as grounds for avoiding the issue.

Because prisoner suits continue to be filed in great number, and because district courts have reached markedly different conclusions on the issue, *see Langford v. Couch*, 50 F. Supp.2d 544, 546 n.9 (E.D. Va. 1999) (collecting cases), courts and litigants in the seven circuits that have not ruled on the issue lack clear guidance. Indeed, there are conflicting decisions on point within some districts. Compare *Polite v. Barbain*, 1998 U.S. Dist. LEXIS 3600 (S.D.N.Y. 1998) with *Beeson v. Fishkill Correctional Facility*, 28 F. Supp.2d 884 (S.D.N.Y. 1998). Moreover, because the issue has not been resolved in the Second, Third or Fourth Circuits, that pattern will continue for the foreseeable future, absent guidance from this Court.

## III. The Ninth Circuit Erred.

Finally, review is warranted because the decision below is at odds with the statute. Congressional intent is of "paramount interest" in any exhaustion inquiry. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). Where Congress has mandated exhaustion, its will must be enforced. *Patsy v. Florida Board. of Regents*, 457 U.S. 496, 502 n.4 (1982). There are at least two ways, in addition to those described in the petition, that the Ninth Circuit's decision strays from Congress's intent.

*First*, the court of appeals misconstrued the meaning of the term "available" in § 1997e(a). The court appears to have adopted the analysis of *Lacey v. C.S.P. Solano Medical Staff*, 990 F. Supp. 1199, 1205 (E.D. Cal. 1997), which held that prisoners have no remedies "available" to them for purposes of § 1997e(a) if they seek damages available in administrative proceedings. *See* Pet. at 10a. In addition to other flaws in the *Lacey* analysis, *see Spence v. Mendoza*, 993 F. Supp. 785, 787-788 (E.D. Cal. 1998), that view fails

to account for the significant changes that prisoners can effect through prison grievance systems even where those grievance systems do not themselves offer damages.

Administrative remedies in the nation's prisons have helped both prison administrators and inmates, in spite of the fact that those remedies almost never include damages. As discussed above, prison grievance systems have led to significant systemic changes benefiting inmates. Further, those remedies resolve a relatively high percentage of individual claims, even though the vast majority of grievance systems do not provide for damages. D. Dillingham and L. Singer, *Complaint Procedures in Prisons and Jails: An Examination of Recent Experience* (National Institute of Corrections, U. S. Dept. of Justice 1980) 34-35, Chart 2 and Table 13. Indeed, the most recent study of New York's grievance system indicated that 36 percent of prisoners' complaints were sustained in whole or in part. *Inmate Grievance Program: Annual Report—1998* (New York Department of Correctional Services 1999) 10.

In contrast, only six percent of prisoner-plaintiffs obtain any relief in court. R. Hansen and H. Dalay, *Challenging the Conditions of Prisons and Jails: A Report on Section 1983 Litigation* (Bureau of Justice Statistics, U. S. Dept. of Justice 1995) at 19, Table 4. Grievance systems can accomplish much for prisoners—and do so at a fraction of the cost of litigation. Congress's judgment that *all* inmate grievances ought to go that route *first* regardless of the particular relief sought is surely a rational one, and should not be obviated by the short-sighted view that remedies are not "available" if they do not provide damages.

Indeed, that principle is well illustrated by the facts of this case. Inmate Rumbles sought three types of relief: (1) an investigation into staff attitudes towards prisoners, (2) an

apology, and (3) $450,000 in punitive damages. Although California's grievance system could not address his decidedly optimistic valuation of his damage claim, it was ideally suited for evaluating the other relief sought. Rumbles's pursuit of administrative relief may well have resolved his claim, and could at least have narrowed the issues.

*Second*, had Congress intended to limit prisoners' obligation to pursue administrative procedures (as the court of appeals held), it likely would have inserted language like that found in the Antiterrorism and Effective Death Penalty Act (AEDPA), which Congress passed the same week as the PLRA. The AEDPA expressly excuses remedies when "circumstances exist that render [state remedies] ineffective." 28 U.S.C. 2254(b)(1)(A)(ii). No similar language appears in § 1997e, and indeed the PLRA's amendments to that provision eliminated a former reference to "effective" administrative remedies. As the Court said about a similar dichotomy in the wording of other statutes, "Congress could easily have" stuck with the former language, but "it chose instead to enact more restrictive language and we are bound by that restriction." *West Virginia University Hospitals, Inc. v. Casey*, 499 U.S. 83, 99 (1991). The court of appeals' contrary ruling now warrants review.

## CONCLUSION

For the foregoing reasons, the *amici* States urge the Court to grant the writ.

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